

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

v.

**Criminal No. 1:17cr12-HSO-JCG-1
Civil No. 1:17cv269-HSO**

TOSH HUMPHREY

**ORDER DENYING WITHOUT PREJUDICE TOSH HUMPHREY'S
[14] MOTION FOR CLARIFICATION, WHICH WAS DOCKETED
AS A MOTION TO VACATE UNDER 28 U.S.C. § 2255**

BEFORE THE COURT is the Motion for Clarification [14] which the Clerk of Court has docketed as a Motion to Vacate under 28 U.S.C. § 2255, filed by Tosh Humphrey on September 28, 2017. For the reasons that follow, the Court will deny Humphrey's Motion [14] without prejudice.

On September 18, 2017, Humphrey filed a Memorandum Brief [12] in Support of Motion to Vacate, Set Aside, or Correct Sentence, pursuant to 28 U.S.C. § 2255. Despite the Brief's title, Humphrey had not filed a § 2255 Motion. The Clerk of Court's docket text to the Brief [12] stated "Memorandum in Support of Motion to Vacate under 28 U.S.C. 2255, filed by Tosh Humphrey (Motion has not been filed)."

On September 21, 2017, the Court entered an Order and Advisory [13] to Humphrey. The Court found that, to the extent the Brief [12] could be construed as a § 2255 Motion itself, it was denied without prejudice, with leave to reassert,

because it did not conform with Rule 2 of the Rules Governing Section 2255 Proceedings for the United States District Courts. The Court directed the Clerk of Court to mail Humphrey a copy of the Order and Advisory [13] and to simultaneously furnish Humphrey with appropriate forms for filing a § 2255 Motion. The Clerk mailed Humphrey the Order and form on September 21, 2017.

In the present Motion [14], which is dated September 25, 2017, and which was filed by the Clerk on September 28, 2017, Humphrey asks the Court to clarify document number 12, which is his Memorandum Brief [12], which he again refers to as a Motion to Vacate under 28 U.S.C. § 2255. *See* Mot. [14] at 1. The Court finds that this Motion [14] is properly construed as a Motion for Clarification, not a § 2255 Motion. It does not appear that Humphrey had received the Court's Order and Advisory [13] at the time he drafted the present Motion [14], as he did not refer to it in his Motion [14]. Nor does his current Motion [14] conform to the requirements outlined in the Order and Advisory [13]. The Court refers Humphrey to its Order and Advisory [13] entered on September 21, 2017.

IT IS, THEREFORE, ORDERED AND ADJUDGED that, Tosh Humphrey's Motion to Clarify [14], which was docketed as a Motion to Vacate under 28 U.S.C. § 2255, is **DENIED WITHOUT PREJUDICE**, and civil action number 1:17cv269-HSO is **DISMISSED**.

SO ORDERED AND ADJUDGED, this the 3rd day of October, 2017.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE